

III. REMARKS:

The Assignee provides amendments to the claims 45, 51, and 52 as presented above and remarks as set out below to address the concerns raised by the office in the official communication sent November 10, 2008. Claims 45, 47-49, 51-64, and 81 are pending.

35 USC § 103 Concerns

Assignee amends independent claim 45 to include, *inter alia*, “a beam of pulsed electromagnetic radiation” and “a common source of said pulsed electromagnetic radiation.” The Potts and Shapiro references do not anticipate or make obvious a system using a shared pulsed laser beam. Until the present invention, it was unknown for persons skilled in the art that a shared pulsed laser beam would work with flow cytometer units for classification of particles from a mixture of particles. Thus, claim 45 and its dependent claims are novel and non-obvious over the prior art and it is respectfully requested that the examiner reconsider and allow the claims.

Additional Information

The amendments submitted herein should be understood to be made as a practicality only, and should not to be construed as creating any situation of file wrapper estoppel or the like as all rights are expressly reserved and may be pursued in this or other applications, such as divisionals, continuations, or continuations-in-part if desired. Relatedly, it should be understood that the amendments made herein are made for tangential issues of clarity and as a matter of the Office’s convenience or expedience only. The amendments should not be interpreted as an action that in any way surrenders a particular equivalency, surrenders any right to patent coverage, or otherwise limits any rights which the Assignee may now or hereafter assert. It should be understood that, unless and to the extent deemed broadened by this amendment, and even as amended, the Assignee expressly reserves all rights, including but not limited to: all rights to maintain the scope of literal coverage with respect to any element as may have existed under the language previously presented, all rights to maintain the scope of equivalency coverage as may have existed under the language previously

presented, and all rights to re-present the prior language at any time in this or any subsequent application. To the extent currently foreseeable, no change or reduction in direct or equivalency coverage is believed to exist, and no change or reduction in direct or equivalency coverage is intended through the presentation of this amendment.

Further, the office and any third persons interested in potential scope of this or subsequent applications should understand that broader claims may be presented at a later date in this or a continuation in spite of any preliminary amendments, other amendments, claim language, or arguments presented, thus there is not intention to disclaim or surrender any potential subject matter.

It should be understood that such broader claims may require that any relevant prior art that may have been considered may need to be re-visited since it is possible that to the extent any amendments, claim language, or arguments presented in this application are considered as made to avoid such prior art, such reasons may be eliminated by later presented claims or the like. Both the examiner and any person otherwise interested in existing or later coverage or considering the possibility of an indication of disclaimer or surrender of potential coverage, should be aware that no such surrender or disclaimer is intended or exists in this application. Limitations such as arose in *Hakim v. Cannon Avent Group, PLC*, 479 F.3d 1313 (Fed. Cir 2007), or the like are expressly not intended in this or any subsequent matter related.

CONCLUSION

The Assignee has addressed all concerns under Sections 103 and respectfully requests an allowance at the examiner's earliest convenience.

Dated this 9th day of April, 2009.

Respectfully Submitted,
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